

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
INBOUND E-FORMAT LETTER POST

Docket No. CP2022-58

**RESPONSE OF THE UNITED STATES POSTAL SERVICE  
TO NOTICE OF PRELIMINARY DETERMINATION**  
(September 6, 2022)

The United States Postal Service (Postal Service) respectfully submits this response to the Notice of a Preliminary Determination to Unseal Self-declared Rates for Inbound Letter Post Small Packets and Bulky Letters, which the Postal Regulatory Commission issued on August 29, 2022 (Notice).<sup>1</sup> In the Notice, the Commission preliminarily determined that the specific self-declared rates for the Postal Service's inbound letter post small packets and bulky letters product (E-format letter post) should be unsealed.<sup>2</sup>

The specific rates now at issue are those that will take effect on January 1, 2023. Similarly, the Commission has three times previously ordered the Postal Service to unseal the specific E-format letter post rates that took effect on July 1, 2020, January 1, 2021, and January 1, 2022.<sup>3</sup> The Postal Service duly complied with all three of the Commission's earlier orders, notwithstanding the opposition it had filed with respect to all three years.

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<sup>1</sup> Notice of a Preliminary Determination to Unseal Self-declared Rates for Inbound Letter Post Small Packets and Bulky Letters, Order No. 6260, Docket No. CP2022-58 (August 29, 2022).

<sup>2</sup> In past years, the Commission had ordered such rates should be unsealed only after the Universal Postal Union (UPU) had subsequently issued its Circular notice containing such corresponding rates. However, for the calendar year (CY) 2023 rates currently at issue, the UPU had already issued its Circular (No. 110) on June 27, 2022, two months prior to the Commission's Notice.

<sup>3</sup> See Order Nos. 5451, 5527, & 5935.

Nevertheless, the Postal Service disagrees with the preliminary determination in the instant Notice. That is, the Postal Service does not concur that its commercial harm from public disclosure ends upon issuance of the UPU Circular. To be clear, the UPU does not “publish” the Circular publicly; to the contrary, the Circular is typically available to UPU operators on a password-protected portion of its website. As such, compelled disclosure of the Postal Service’s inbound UPU rates provides an unfair competitive advantage to private competitors even after issuance of the UPU Circular, particularly to the extent that the Postal Service does not have comparable public access to its private competitors’ rates.

Although the Postal Service acknowledges that the Commission’s Notice is facially in accord with its past determinations, circumstances have changed, warranting a different outcome. The Postal Service’s self-declared E-format rates have now been in effect for over two full years since they first took effect in July 2020. As a competitive product in a competitive marketplace, volumes have been suppressed. Although the effects of the COVID-19 pandemic on postal products have been mixed, there can be no doubt that the significant increase in terminal dues rates after the self-declared rates took effect had a suppressive effect on the Postal Service’s E-format volumes during the past 26 months.

In the Postal Service’s Application for Non-public Treatment of these new CY 2023 rates,<sup>4</sup> the Postal Service observed that, while these new CY 2023 rates are in effect, the competitive marketplace will have had three years to adjust since the

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<sup>4</sup> Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-format Letter Post, and Application for Non-Treatment, Docket No. CP2022-58 (April 29, 2022) (Att. 1 at 5).

introduction of self-declared rates in July 2020. In its Notice,<sup>5</sup> the Commission does not recognize why such changes would increase the competitive harm to the Postal Service or decrease the public's purported interest in disclosure. To be clear, the Postal Service has consistently contended that such harm had begun with the very first compelled disclosure in 2020, providing private competitors with information about this competitively classified Postal Service product that is not otherwise available publicly. But in the intervening 26 months since self-declared rates took effect, any original "public interest" in the primary concerns that the Commission identifies – the poor financial performance of Inbound Letter Post until 2020, and the UPU terminal dues system that drove that poor performance<sup>6</sup> – has been overwhelmingly eliminated by the UPU reforms adopted in 2019 and then applied with self-declared rates since July 2020.

First, the Commission transferred Inbound Letter Post Small Packets and Bulky Letters from the market dominant classification to the competitive classification effectively in 2020. Second, the UPU reforms adopted at the UPU Geneva Congress in 2019 allowed the Postal Service to apply self-declared rates for the newly competitively classified product effective in July 2020. The interest in the past poor performance was not only resolved in theory by those reforms, but in practice. The past 26 months have provided a track record, showing the rise in rates and suppression of volumes in the competitive marketplace, but also a marked increase over the pre-Geneva Convention Protocol in sufficient cost coverage with the higher rates. All of these circumstances have indeed addressed the public concerns of the pre-reform period. In considering the

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<sup>5</sup> Order No. 6260 at 13.

<sup>6</sup> Id.

balancing for compelled disclosure,<sup>7</sup> the Commission should acknowledge these changed circumstances and the greatly diminished public interest in continuing to compel public disclosure of these competitive rates.

The Commission reasons that, notwithstanding these changed circumstances, the self-declared rates have been in effect for only one full fiscal year (FY 2021)<sup>8</sup> and that its assessment of the product's compliance for FY 2022 will not be public until it issues its next Annual Compliance Determination in March 2023.<sup>9</sup> That may be so, but it does not affect any public interest in disclosure of these rates. The rates themselves do not provide transparency into the financial performance of the product; if the financial performance of the product is the key public interest, the rates do not shed any light. To the contrary, unsealing the rates involuntarily will not provide public transparency into cost coverages. In any event, the Commission has already evaluated the cost coverages of these new CY 2023 rates when it reviewed them in detail and concluded that they comply with all statutory and regulatory requirements;<sup>10</sup> that conclusion, and the confidence that the public places in the Commission in its analysis of the rates, is already in the public domain and should amply suffice to inform the public about the sound financial performance of the E-format product.

In addition, the Postal Service files volume data every quarter, so the Commission already has data showing the volume decreases since the self-declared rates first took effect, and not only during FY 2021. Indeed, the most recent public

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<sup>7</sup> See 39 U.S.C. § 504(g)(3); 39 C.F.R. § 3011.104(a).

<sup>8</sup> Of course, in less than a month from now, self-declared rates will have been in effect for two full fiscal years.

<sup>9</sup> Order No. 6260 at 13.

<sup>10</sup> Order Approving Prices for Inbound Letter Post Small Packets and Bulky Letters, Order No. 6187, Docket No. CP2022-58 (May 26, 2022), at 4.

quarterly report showed an approximately 32% decline in inbound international competitive volumes for the first three quarters of FY 2022 compared to the same period in FY 2021,<sup>11</sup> and both of those time periods were during the pandemic. Although those public inbound competitive volumes do not consist exclusively of E-format letter post, nonetheless they strongly suggest that the competitive marketplace has in fact adjusted to the introduction of the higher self-declared rates and does not need regulatory overreach. In the Notice, the Commission explains that the former Administration's concerns in 2018 were that the UPU terminal dues system "distorts" the international packets market without adequately reimbursing the Postal Service's costs.<sup>12</sup> The UPU reforms and introduction of the self-declared rates have addressed those concerns, and the Commission should now refrain from introducing new, artificial distortions into this competitive market.

Moreover, the Commission focuses its attention on the lack of harm to the Postal Service following the UPU's issuance of its Circular, because foreign designated postal operators already have access to the rates. However, competitive harm continues, because private competitors still generally lack access to the rates, which is commercial information that the Postal Service would not, under good business practice, make public absent the Commission's compelled disclosure.<sup>13</sup> Importantly, the rates at issue are rates "not of general applicability."<sup>14</sup> They apply only in the context of the UPU, setting the rates that the Postal Service may charge other UPU designated operators for

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<sup>11</sup> See Revenue, Pieces and Weight report, Quarter 3 FY 2022 YTD Public tab (filed August 9, 2022), at cell R-187.

<sup>12</sup> Order No. 6260 at 14.

<sup>13</sup> See 39 U.S.C. § 410(c)(2); see also 5 U.S.C. § 552 (b)(3)-(4).

<sup>14</sup> 39 C.F.R. § 3035.105; see Order No. 6187 at 5 (citing and applying 39 C.F.R. § 3035.105); see also Notice of the United States Postal Service of Rates Not of General Applicability for Inbound E-format Letter Post, and Application for Non-Treatment, Docket No. CP2022-58 (April 29, 2022), at 1.

the acceptance and delivery of inbound E-format mail that they dispatch to the United States. It is hardly surprising that the foreign designated postal operators, to which these rates not of general applicability *do* apply, need to know what the specific rates will be, as those rates determine their own costs of service and inform how much postage that they decide to charge their customers. The same is not true with respect to private competitors, which do not share that need to know.

Likewise, the rates now at issue are *not* similar to the other competitive products that the Commission cites in its Notice, such as Priority Mail and First-Class Package Service.<sup>15</sup> Those are products for sale to the public at large, and the rates for those other products are rates of general applicability. By contrast, the Postal Service's self-declared rates for E-format letter post are more akin to other rates not of general applicability for competitive products, such as those in negotiated service agreements. The Postal Service does not have access to the rates that its competitors negotiate and include in their contracts; such information is non-public and commercially sensitive.<sup>16</sup> Compelled public disclosure of the Postal Service's rates therefore creates a regulatory distortion in the marketplace to the Postal Service's competitive detriment.

In short, the Commission should recognize these changed circumstances and should cease ordering compelled public disclosure of these competitive E-format letter post rates.

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<sup>15</sup> Order No. 6260 at 12.

<sup>16</sup> The Commission's reference to separate concerns about the "potential for price discrimination" (Order No. 6260 at 15) are thus misplaced; this is a competitive market, which constrains the prices that the Postal Service can negotiate and charge. The only "potential for price discrimination" under these circumstances arises from the fact that the Postal Service does not have similar access to its private competitors' negotiated prices, and such discriminatory treatment would disadvantage the Postal Service if its competitive rates not of general applicability are involuntarily unsealed.

Respectfully submitted,

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